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In the Supreme Court of the United States

OCTOBER TERM, 1966.

No. 411.

(Two Cases.)

LINA DERRITT,

Petitioner,

vs.

STATE BOARD OF REAL ESTATE EXAMINERS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF OHIO.

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Lina Derritt, Petitioner, prays that a Writ of Certiorari issue to review the judgments of The Supreme Court of Ohio dismissing the Appeals of Petitioner from the Court of Appeals for Cuyahoga County, Ohio, and overruling the Motions to Certify its Records, to The Supreme Court of Ohio.

The Appeals by Petitioner to The Supreme Court of Ohio and the Motions to Certify its Records were from decisions by the Court of Appeals affirming judgments of The Common Pleas Court of Cuyahoga County, Ohio, wherein Common Pleas Court sustained the Respondent's Motions to strike the petitions for a new trial from the files and ordered the same stricken from the files.

OPINIONS BELOW.

The Common Pleas Court ordered the petitions for a new trial stricken from the files without opinion and the Court of Appeals affirmed without opinion.

JURISDICTION.

Judgments of the Supreme Court of Ohio dismissing Petitioner's Appeals and overruling her Motions to Certify the Records were entered on May 4, 1966. The jurisdiction of this Court is envoked under 28 U. S. C. 1257 (3).

QUESTIONS PRESENTED.

Section 2321.21, Revised Code of Ohio, provides for the filing of a petition for new trial after term.

Section 2321.22, Revised Code of Ohio, then sets forth the manner in which the petition is to be considered and the case heard and decided. The question presented is:

Whether sustaining the Motions to strike the petitions from the files constituted denial of Due Process of Law under Amendment XIV of the Constitution of the United States.

LAWS INVOLVED.

Amendment XIV to the Constitution of the United States, Due Process Clause, is involved.

Section 2321.21, Section 2321.22, and Section 1.12 of the Revised Code of Ohio are involved.

STATEMENT.

The Petitioner, in each case after term, filed a petition for new trial in the Common Pleas Court of Cuyahoga County, Ohio. The Respondent then filed in the Common Pleas Court a Motion to strike each petition from the files. The Common Pleas Court sustained the Motions to strike the petitions from the files and they were ordered stricken.

It is the contention of the Petitioner that the Common Pleas Court was without jurisdiction or authority to strike the petitions from the files, the statutes of Ohio being to the effect that a hearing on the petition is mandatory.

REASONS FOR GRANTING THE WRIT.

Federal quesions, all of substance, were decided by the Supreme Court of Ohio positively not in accord with applicable decisions of this Court. The cases present questions whose resolution will have immediate importance far beyond the particular facts involved in these cases.

There is not only a conflict between the decisions of the Ohio Supreme Court and this Court, but there is also wide conflict between the decisions of the Ohio Supreme Court and the United States Court of Appeals, on the Federal questions involved.

The matters involved are important generally in the interpretation and application of certain laws of Ohio, but are most important to the legal profession who, of necessity, must be clear in their minds as to the application and interpretation of laws on the statute books. The Respondent is a public body and the public interest is involved.

NO JURISDICTION.

The powers of a court may not be exercised in a matter beyond its jurisdiction. Jurisdiction is essential before a court has authority to hear or consider an issue. Without jurisdiction its acts are void. Depriving Petitioner of her right to consideration of her Petitions for new trials by dismissal in a summary proceeding, without a hearing is a flagrant denial of due process.

Section 2321.21 Revised Code provides for the filing of a petition for new trial after term.

Section 2321.22 Revised Code then sets forth the manner in which the petition is to be considered and the case heard and decided. It is as follows:

> "2321.22 *Facts in petition considered and case heard and decided:*

> The facts stated in the petition, mentioned in Section 2321.21 of the Revised Code, shall be considered as denied, without answer. If the service is complete in vacation, the case shall be heard and summarily decided at the ensuing term, and when completed in term, within twenty days after service. The case shall be placed on the trial docket, and witnesses examined in open court, or their depositions taken as in other cases."

The filing of a petition for a new trial, the pleadings necessary to make up the issues, the procedure for hearing and disposition thereon, are purely statutory and are contained in Sections 2321.21 and 2321.22 Revised Code. There is no provision in the code for the filing, or even the consideration of a "Motion to Strike the Petition from the Files," as was done in this case, and the court was clearly acting beyond its authority in doing so.

The statute clearly states that the petition shall be considered *as denied without answer* and further provides that it *must be heard* within a specified time.

Section 2321.22 is a "Special Proceeding" relating to a Petition for a new trial and must be followed *to the exclusion of any general provisions of the Revised Code relating to procedure.*

Section 1.12 Revised Code provides:

> "When a special provision is made in a remedial law as to service, pleadings, competency of witnesses, or in any other respect inconsistent with the general provisions of sections of the Revised Code relating to procedure in the court of common pleas and procedure on appeal, the special provision shall govern, unless it appears that the provisions are cumulative."

The "Special Proceedings" outlined by the Code (Sections 2321.21 and 2321.22) relating to a Petition for new trial after term provide for:

1. The filing of a Petition.
2. Issuance of a summons thereon.
3. Allegations of Petition denied *without answer.*
4. Time of hearing.
5. Placing case on trial docket.
6. Examination of witnesses in open court, or by deposition.

There is absolutely no provision for the filing or consideration of motions, demurrers or any other pleading and under the clear provisions of Section 1.12 Revised Code, the court was without authority to entertain, hear and rule on a motion to strike the petition. The court was entirely without jurisdiction to act as it did, and consequently, its action was null and void.

> "Whether the state court has denied to rights asserted under local law the protection which the constitution guarantees is a question upon which the Petitioner is entitled to invoke the jurisdiction of this court * * * It is the province of this court to inquire whether the decision of the state court rests upon a fair or substantial basis." *Broad River Power Co., et al. vs. South Carolina,* 281 U. S. 537, 540.
>
> "When a federal right has been specifically set up and claimed in a state court, it is our province (this court) to inquire not merely whether it was denied in express terms, but also, whether it was denied in substance and effect. If this requires an examination of the evidence, that examination must be made. Otherwise, review by this court would fail of its purpose in safeguarding constitutional rights." *Norris vs. Alabama,* 294 U. S. 587, 589.

CONCLUSION.

In these cases, the real estate license of the Petitioner was revoked by the Respondent and the Petitioner filed Petitions for a new trial on the grounds of newly discovered evidence. Your Petitioner is presenting the ultimate propositions herein: That where her right to practice her profession is at stake to deny her a hearing upon her petition as is plainly set forth in the statute, is a flagrant denial to the Petitioner of Due Process under the Constitution.

Respectfully submitted,

JOHN G. PEGG and
JOHN H. BUSTAMANTE,
Attorneys for Petitioner.

APPENDIX A.

AMENDMENT XIV, CONSTITUTION OF UNITED STATES.

AMENDMENT XIV (Rights of Citizens).

1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX B.

SECTION 2321.21 REVISED CODE OF OHIO.

SECTION 2321.21 Application may be made after term.

When, with reasonable diligence, the grounds for a new trial could not be discovered before but are discovered after the term at which the journal entry of a final order, judgment, or decree has been approved by the trial court in writing and filed with the clerk of the court for journalization, the application for a new trial may be by petition, filed not later than the second term after the discovery, nor more than one year after the final order, judgment, or decree was rendered, on which a summons must issue, be returnable, and be served, or publication made, as in other cases.

APPENDIX C.

SECTION 2321.22 REVISED CODE.

SECTION 2321.22 Facts in petition considered and case heard and decided.

The facts in the petition mentioned in section 2321.21 of the Revised Code, shall be considered as denied, without answer. If the service is complete in vacation, the case shall be heard and summarily decided at the ensuing term, and when completed in term, within twenty days after service. The case shall be placed on the trial docket, and the witnesses examined in open court, or their depositions taken as in other cases.

APPENDIX D.

SECTION 1.12 REVISED CODE OF OHIO.

SECTION 1.12 Special provisions govern unless cumulative.

When a special provision is made in a remedial law as to service, pleadings, competency of witnesses, or in any other respect inconsistent with the general provisions of sections of the Revised Code relating to procedure in the Court of Common Pleas and procedure on appeal, the special provision shall govern, unless it appears that the provisions are cumulative.

APPENDIX E.

ORDER OF THE SUPREME COURT OF OHIO.

(May 4, 1966.)

This cause, here on appeal as of right from the Court of Appeals for Cuyahoga County, was heard in the manner prescribed by law, and, no motion to dismiss such appeal having been filed, the Court sua sponte dismisses the appeal for the reason that no substantial constitutional question exists herein.

It is further ordered that the appellee recover from the appellant its costs herein expended; that a mandate be sent to the Common Pleas Court to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Cuyahoga County for entry.

ORDER OVERRULING MOTION TO CERTIFY.

(May 4, 1966.)

It is ordered by the Court that this motion is overruled.